HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

–

Writ Petition No. 24022 of 2005

–

Dated: 14th December, 2005

Between:

Shaik Fazlee Yaseen, S/o.Shaik Adam Saheb, Mujawar,

R/o.6th Line, Sangadigunta, Guntur.

..... PETITIONER

AND

1. The Principal Secretary to Government,

Department of Revenue, Government of A.P.,

Hyderabad and others.

.....RESPONDENTS

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.24022 of 2005

ORDER:

When Rev.W.P.M.P.No.32611 of 2005 came up for consideration, with the consent of both the parties, the writ petition itself is taken up for hearing and is being disposed of by this Order.

2. This writ petition has been filed by Shaik Fazlee Yaseen, claiming himself as Mujawar, challenging the G.O.Ms.No.400 Revenue (UC.1) Department dated

09.06.1998 and G.O.Ms.No.142 Revenue (UC.1) Department dated 28.01.2005.

3. The case of the petitioner, in brief, is as follows: An extent of Ac.26.24 cents comprising Survey Nos.982, 983 and 1174 is attached to Ashoorkhana, for which he has been the Muzawar. Andhra Pradesh State Wakf Board represented by its Secretary-2nd respondent accorded permission to sell the lands belonging to the Ashoorkhana without proper application of the provisions of the Section 51 of the Wakf Act, 1995 (for short, 'the Act'). To know the grievance of the petitioner, it is suffice to refer paras.8 and 9 of the affidavit filed in support of the writ petition and they are thus:

> "8. It is submitted that by order dated 28.12.1990 in O.P.No.134 of 1990 all the aforementioned suits were transferred to the Court of the Principal Senior Civil Judge, Guntur, to be tried together in order to avoid conflict of decisions. And by common order dated 21.02.2002 all the suits were dismissed. The petitioner preferred appeals against the dismissal of the suits and the same are pending adjudication. One such Appeal, i.e. A.S.No.131 of 2003 was allowed by order dt.29.03.2004, and the Appellate Court remanded the matter for fresh Trial on all issues. The petitioner obtained temporary injunction orders against the respondents in all the above cases at the inception and since the matter has been remanded to be tried, the orders obtained earlier have revived and same are subsisting as on date.
>
> 9. It is further submitted that the petitioner in the month of October, 2005 received caveat petitions filed by the respondents 3 and 4 before the Hon'ble High Court and upon enquiries acquired knowledge that the Government vide G.O.Ms.No.400 dated 09.06.1998 and G.O.Ms.No.142 dated 28.01.2005 permitted the 3rd respondent to sell 17 Acres of land to the 4th respondent. And in pursuance thereof the 3rd respondent by registered deed vide document No.11624/2005 dated 12.08.2005 sold 17 acres of land to the 4th respondent. Aggrieved by the same the petitioner begs to file the present writ petition for the following among other grounds."

Hence, this writ petition.

4. The writ affidavit is silent with regard to the earlier writ petition filed by the petitioner. It appears the petitioner filed W.P.No.11690 of 1988 questioning the G.O.Ms.No.989 Revenue (Wakf) Department, dated 06.08.1977 issued by the

Government of Andhra Pradesh. The said writ petition ended in dismissal on 06.02.1989. The petitioner carried the matter in Writ Appeal No.720 of 1989 and the said writ appeal ended in dismissal on 13.06.1989. It is suffice to refer the order dated 13.06.1989 passed in the Writ Appeal No.720 of 1989 and it is thus:

> "It is clear from the judgment of the learned single Judge that the appellant himself had filed a memo. in the suit agreeing for sale of the land in favour of Mohammadiya Educational Society, Guntur, and the learned single Judge has held that, in view of the said memo it is not open to the appellant to file the writ petition challenging the same.
>
> We agree with the learned single Judge, and consequently dismiss this W.A."

The petitioner filed the present writ petition as if he is not aware of the decision of the Government to sell the properties to Mohammadiya Educational Society, Guntur, represented by its Secretary-3rd respondent.

5. Counter affidavits have been filed on behalf of the respondents 3 and 4. It is suffice to refer para.3 of the counter affidavit of 3rd respondent and it is thus:

> "3. The allegations mentioned in paras 2, 3 and 4 are all false and denied. It is respectfully submitted that the petitioner filed No. of suits with false allegations in the capacity of Muzavar stating that he is having rights over the suit schedule property belonging to Bara Imam Punja a wakf institution in Guntur. The petitioner herein as plaintiff filed suits in different courts O.S.1063/87, O.S.83/88 and O.S.901/87, later the petitioner filed a declaration suit in O.S.281/90 on the file of the Court of Prl. Senior Civil Judge, Guntur. Subsequently all the 3 suits were clubbed with O.S.281/90 and renumbered as O.S.133/91, O.S.149/91 and O.S.131/91 respectively. All the three suits were tried and dismissed by the Hon'ble Prl. Senior Civil Judge, Guntur on 21.2.2002 on the ground of jurisdiction. Aggrieved by the said order the petitioner preferred an appeal before Hon'ble High Court of A.P. in A.S.No.1192/2002 while the same is pending the petitioner again filed this petition which is not maintainable either under law or on facts. It is submitted that Baara Imam Punja a notified Wakf Institution having landed property of Ac.26.24 cents for its maintenance. The A.P. Wakf Board appointed a Muttavalli by name Mr. Fazlur Rahaman S/o.Nasar Ahamad in Rc.No.A1/B/69/2082 dt.20.4.1969 (Photostat copy is enclosed). Since then the Mutavalli is managing the Institution. There is no post of Muzavar and the petitioner never appointed as Muzavar to look after the Institution. Hence, the

allegations mentioned in the affidavit of the petitioner are false. As per the Wakf Act the properties of a wakf institution cannot be divided by the Mutavalli to his successors. As the petitioner is not a mutavalli the question of performing Moharam festival does not arise and there is no hereditary rights to convey from his father who is not a Mutavalli appointed by the A.P.S.Wakf Board."

6. Earlier litigation between the parties has been detailed in the counter affidavits. The 3rd respondent also placed on record the copies of the orders passed in the earlier writ petition and writ appeal.

7. Heard learned counsel appearing for the petitioner, learned Government Pleader for Revenue appearing for the 1st respondent, learned Standing Counsel appearing for the 2nd respondent and learned counsel appearing for the respondents 3 and 4.

8. Learned counsel appearing for the petitioner submits that the petitioner is not aware of the sale of the property in favour of the 3rd respondent till he received the copy of the caveat petition and thus, cause of action has arisen to approach this Court by invoking the jurisdiction under Article 226 of the Constitution of India. He further submits that the land admeasuring Ac.26.24 cents has been attached to Ashoorkhana and the petitioner being a muslim is entitled to question the action of the Wakf Board in according approval for alienation of the lands. He refers Section 51 of the Act to convince the Court that the permission granted by the Wakf Board is not in accordance with the provisions contained therein. He also refers Articles 25 and 26 of the Constitution of India with regard to maintainability of the writ petition.

9. Learned Standing Counsel appearing for the Wakf Board-2nd respondent submits that the petitioner having failed to secure the relief in the civil suit has resorted to filing of the writ petition and therefore, the writ petition is liable to be dismissed with exemplary costs. The learned Standing Counsel also invited the attention of this Court to the orders passed by this Court in the earlier round of the litigation.

10. The material brought on record clearly shows that the petitioner was well aware of the decision of the Wakf Board to sell away the property in the year 1988 itself. Indeed, the petitioner choose to question the G.O.Ms.No.989 Revenue (Wakf) Department dated 06.08.1977 as well as the resolution No.221 of 1984 dated 26.11.1984 by filing Writ Petition No.11690 of 1988. The said writ petition ended in dismissal on 06.02.1989. The petitioner unsuccessfully carried the matter to the writ appeal and the Writ Appeal No.720 of 1989 ended in dismissal on 13.06.1989. Therefore, it cannot be said that the petitioner was not aware of Wakf Board according sanction to sell the property attached to Ashoorkhana. The petitioner being lost the civil suits has chosen to approach this Court by invoking the jurisdiction under Article 226 of the Constitution of India. The approach of the petitioner is to be deprecated and this is a fit case for imposing exemplary costs on the petitioner.

11. Accordingly, the writ petition is dismissed with costs of Rs.5,000/-.

_____

B.SESHASAYANA REDDY, J.

Date: 14th December, 2005.

Note:

Issue C.C. within a week.

B/O

cs